

Claimant testified she was struck on the head, neck, and upper back by a 6-foot long shelf and empty cardboard boxes on January 21, 1997, while working for the respondent. Before testimony was presented at the preliminary hearing, the Judge asked if there was any issue that claimant was injured at work and respondent's attorney replied that was not an issue:

THE COURT: . . . What are the issues in this thing? Is there any question that she got hurt at work? Is that an issue?

MR. AUSTIN: Not really, Judge, no.

But respondent and its insurance carrier now contend in their brief submitted to the Appeals Board that claimant did not prove she was injured as a result of the January 21, 1997, incident. After reviewing several inches of medical records and observing claimant testify, the Judge found she did sustain a work-related injury.

The Appeals Board finds the issue actually presented to the Administrative Law Judge was whether claimant needed medical treatment. That preliminary hearing issue, however, is not subject to appeal at this juncture of the proceeding. But, it may be reserved for the full hearing on the claim. See K.S.A. 1997 Supp. 44-534a.

In their notice of appeal to this Board, the respondent and its insurance carrier raised the issue of timely notice required by K.S.A. 44-520. But that issue was not presented to the Administrative Law Judge and, therefore, may not be considered on review. See K.S.A. 1997 Supp. 44-555c, which limits Appeals Board review to those questions of law and fact presented to the administrative law judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS
Jeffrey S. Austin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director